

II. REMARKS

A. Introduction

In this Office Action claims 1-3, 6-8, 16, 21 and 23-50 are noted as pending and are rejected.

In summary of this Response, the specification has been amended to update the reexamination information, claims 6, 7, 24, 25, 30, 31, 36 and 37 are canceled without prejudice or disclaimer, claims 1, 16, 27, 33, 39, 42, 45 and 48 are amended, and remarks are provided.

Each independent claim is now amended to recite that the leaf spring/biasing member and the third shaft/horizontal shaft/projecting portion are formed as a unitary member. See, e.g., canceled claim 7 for support.

Each independent claim is also amended to define the third shaft/horizontal shaft/projecting portion projects from the opposing sides of the leaf spring/biasing member middle portion. See, e.g. canceled claim 6 and Fig. 13 for support.

Further, each independent claim is amended to recite that the recess is formed to receive and hold at least a portion of the third shaft/horizontal shaft/projecting portion, and the recess is formed in a direction of length of the third shaft/horizontal shaft/projecting portion. See, e.g., canceled claim 6 and Figs. 11 and 12A and B.

B. Rejection of Claims 16, 21, 23-25, 27-31, and 39-44 Under 35 U.S.C. Section 103

These claims are rejected as being made obvious by a combination of Minato and Balthazor.

Minato is relied upon for disclosing, among other things, a leaf spring (36) "located on top of the chassis... [and having]... a projecting portion or shaft (37) formed at a middle portion thereof ... to attach the leaf spring within a cleft in the frame... formed by the hollow or unfilled space between protuberances or loops on a flat portion of the frame..." Action, page 3, lines 5-13, emphasis supplied.

In regard to the meaning of "cleft", it is understood from an interview with Examiner Hylinski on May 15, 2008, that the term refers to a space defined by either loop (38a or 38b) and the upper surface of the support member 29 of Minato, as opposed to a space extending between the two loops 38a and 38b, across the upper surface of the support member 29.

In any case, the Action admits that Minato does not disclose the recitation of "the recess portion being formed in the flat portion of the chassis." Action, page 3, line 17. Nevertheless, Balthazor is cited for teaching "that it is well known in the toy art to hold a spring member in

place by means of a recess (46) formed within a flat portion of a chassis.” The Examiner argues that it would have been obvious to “substitute [the Balthazor] method [for holding the spring] for the [Minato] method] to achieve the predictable result of holding a spring member in place.” Action, page 3, lines 21-22.

As noted above, rejected claims 24, 25, 30 and 31 are canceled. However, for the following reasons, it is respectfully submitted that the present invention, as recited by amended claims 16, 21, 23, 27-29 and 39-44, was not rendered obvious by the cited art.

As is believed clear, the spring 36 of Minato and the shaft 37 thereof are always entirely above the chassis member 29. In contrast, the present claims recite a portion of the spring being received within a recess formed in the chassis member, but a majority of the spring/biasing member extending above the top of the chassis. Balthazor does not teach any portion of the spring 34 being located above the top of the chassis. The spring 34 of Balthazor is entirely below the top of the chassis. See, e.g., Figs. 2-4 thereof. As noted in previous Responses, it is not believed possible to combine the above the chassis spring of Minato and the below the chassis spring of Balthazor and still obtain a suspension which is biased as recited herein.

Further, as noted above, each independent claim is now amended to recite that, e.g., the leaf spring/biasing member and the shaft/projecting portion are formed as a unitary member and that the shaft/projecting portion projects from the opposing sides of the leaf spring/biasing member middle portion. Balthazor’s projection 48 does not project from the sides of the spring 34, but is merely a bump or protuberance internally thereof. Again, it is not seen how these contrary structures can be reconciled.

Moreover, each independent claim is amended to recite, e.g., that the recess is formed to receive and to hold at least a portion of the shaft/projecting portion, and the recess is formed in a direction of length of the shaft/projecting portion. Balthazor fails to disclose at least that the recess is formed in a direction of length of the shaft as defined. Balthazor’s “recess” 46 is formed in the direction of the spring 34, not in a direction of a shaft or projecting portion that projects from the side of a spring.

Finally, Minato discloses that the member 36 carries out seesaw movement of the steering wheels 27, 28. Accordingly, should Minato and Balthazor be combined as suggested, the object of Minato to keep uniform pressure on the left and right steering wheels to the floor, via the seesaw movement, cannot be attained because Balthazor’s arrangement would simply prevent seesaw movement. Thus, the combination of Minato and Balthazor, as suggested by the Action, would not be adopted by one of ordinary skill in this art.

C. Rejection of Claims 26 and 32 Under 35 U.S.C. §103

These claims are rejected as being made obvious by the above-discussed combination and Perryman, on the ground that Perryman teaches plastic or metal springs.

Perryman is not cited in the Action for disclosing or teaching a recess in a flat upper portion of the chassis to receive a portion of a leaf spring/biasing member, a unitary shaft or projecting portion that extends on opposing sides of the leaf spring/biasing member, a majority of a leaf spring or a biasing member extending above the top of a chassis, and/or the shaft/projecting portion being received and held in the recess, and does not in fact include such disclosure or teaching. Thus, regardless of any teaching of materials, Perryman cannot compensate for the incomplete teaching of the Minato/Balthazor combination discussed above.

D. Rejection of Claims 45-50 Under 35 U.S.C. §103

These claims are rejected as being made obvious by the Minato/Balthazor combination discussed above, and further in view of Booher. This reference is cited for teaching independent movement of the ends of a leaf spring.

Booher, like Perryman, is not cited in the Action for teaching or disclosing a recess in a flat upper portion of the chassis to receive a portion of a leaf spring/biasing member, a unitary shaft or projecting portion that extends on opposing sides of the leaf spring/biasing member, a majority of a leaf spring or a biasing member extending above the top of a chassis, and/or the shaft/projecting portion being received and held in the recess, and does not in fact include such disclosure or teaching. Thus, regardless of any teaching of movable ends of a spring, Booher cannot compensate for the incomplete teaching of the Minato/Balthazor combination discussed above.

D. Double-Patenting Rejection

Claims 1-3, 6-8, 16, 21 and 23-50 are rejected based on "obviousness-type double patenting" over claims 1-5 and 7 of the parent, i.e., U.S. Patent No. 6,656,011 (the '011 patent) with Minato.

The Action takes the position that the differences between the respective sets of claims are the present application's recitation of "upper portion of the chassis being flat and the leaf spring being formed as a unitary member having a shaft" which are not found in the claims of the '011 patent. However, Minato is cited for "teaching" a "flat upper chassis to which is held a unitary leaf spring with shaft." The Examiner concludes that "it would have been obvious ... to have the

upper portion of the chassis be flat and to have the leaf spring integrally formed with the shaft ... a mere change in shape of component." Action page 6, lines 8-13.

As noted above, rejected claims 6, 7, 24, 25, 30, 31, 36 and 37 are canceled. However, for the following reasons, it is respectfully submitted that the present invention, as recited by amended claims 1-3, 8, 16, 21, 23, 26-29, 32-35 and 38-50 was rendered obvious by such a combination.

Applicant would like to advise the Examiner that the '011 patent was reexamined and has resulted in Reexamination Certificate (76th) on June 30, 2009, a copy of which is included with the Information Disclosure Statement being filed concurrently herewith.

Also, as noted above, the rejected claims herein have been further amended to recite that the leaf spring/biasing member and the shaft/projecting portion are formed as a unitary member, the shaft/projecting portion projects from the opposing sides of the leaf spring/biasing member middle portion, and the recess is formed to receive and hold at least a portion of the shaft/projecting portion and the recess is formed in a direction of length of the shaft/projecting portion. These features are not recited in the patented claims, nor are they taught by Minato.

The shaft of Minato fits loosely within the loops 38a and 38b that are "in a protruding condition on the support member 29" to provide a seesaw action. As Minato has no recess formed in the upper surface of the support member 29, as acknowledged by the Action, there would be no teaching to one of ordinary skill as to why or even whether a shaft/projecting portion should be used to connect a leaf spring to a chassis in a recess formed in the chassis.

More particularly, Minato shows the seesaw member extending entirely above the chassis. Minato includes no suggestion or teaching of a means or need to have at least a portion of a leaf spring, i.e., the shaft received within a recess formed in the top of a chassis, with a majority of the leaf spring extending above the chassis. This configuration facilitates miniaturization of the running toy, as part of the leaf spring can be received within the chassis, and not entirely above and spaced from the flat upper surface of the chassis, as in Minato. This spacing increases the height of the Minato suspension. Further, by receiving the shaft in the recess formed in the chassis, but having a majority of the leaf spring extending above the chassis, the biasing force can be created against the wheel shafts, instead of Minato's seesaw action.

Finally, Minato does not indeed teach just a flat chassis per se. It cannot be ignored that Minato teaches that the chassis includes the "protruding" loops which necessarily factor into how the Minato structure operates.

III. CONCLUSION

In light of the above amendments and remarks, it is respectfully submitted that claims 1-3, 8, 16, 21, 23, 26-29, 32-35 and 38-50 are now in condition for allowance.

If there are any additional fees associated with this Response, please charge same to our Deposit Account No. 19-3935.

Finally, if there are any formal matters remaining after this Response, the undersigned would appreciate a telephone conference with the Examiner to attend to these matters.

Respectfully submitted,

STAAS & HALSEY LLP

Date: _____

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By: _____

William F. Herbert
Registration No. 31,024

1201 New York Avenue, NW, 7th Floor
Washington, D.C. 20005
Telephone: (202) 434-1500
Facsimile: (202) 434-1501